

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG DRY CREEK - BASIN (40D)
PRELIMINARY DECREE

CLAIMANTS: Barbara C. Hirsch; Craig V. Taylor;
Sherryn M. Taylor

CASE 40D-0245-R-2023

40D 174843-00

40D 174844-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) were subject to issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation ("DNRC"), objections, counterobjections, and notices of intent to appear. To address the issue remark on the above-mentioned claims, it is

ORDERED that the following claims be consolidated into Water Court Case 40D-245-R-2023: 40D 174843-00 and 40D 174844-00.

This case involves two water rights owned by Barbara Hirsch, Craig Taylor, and Sherryn Taylor. Both claims are for stock groundwater claims. The claims appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D). No objections were filed to either claim.

On June 10, 2019, Craig and Sherryn Taylor filed Amendment to Statement of Claim to claims 40D 174843-00 and 40D 174844-00. The amendment requested a change to the period of diversion. Pursuant to the requested amendment, the DNRC placed the following issue remark on both claims:

AN AMENDMENT WAS SUBMITTED ON 06/10/2019 REQUESTING TO AMEND THE PERIOD OF DIVERSION AND PERIOD OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

FINDINGS OF FACT

1. Claimant Craig Taylor contacted Water Resources Specialist Misty Hauer on May 21, 2019. The Claimant and Misty Hauer discussed changing the period of diversion and period of use.

2. The claims were decreed with a period of diversion from March 1 to August 31. The period of diversion for the place of use and period of diversion for claims

40D 174843-00 and 40D 174844-00 should be changed to January 1 through December 31; a year-round stock claim.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.
3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
4. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.
5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.
6. The Objection List issued in this basin gave all water users notice of the possible correction of the elements addressed in this Master's Report. This notice is reasonably calculated to inform parties of proceedings affecting their water rights. None of the changes requested by the Claimants are outside the scope of their objections or issue remarks. Thus, additional notice is not required before these corrections are implemented. *Geil v. Missoula Irrigation District*, 2002 MT 269, ¶ 53, 312 Mont. 320, 59 P.3d 398.
7. For the above-mentioned reasons, the claims in this case should be

modified as shown on the attached abstracts to resolve all issue remarks.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right claims are served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Barbara C. Hirsch
821 Silver Sage Dr.
Miles City, MT 59301

Craig V. Taylor
Sherryn M. Taylor
PO Box 178
Angela, MT 59312

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 174843-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARBARA C HIRSCH
821 SILVER SAGE DR
MILES CITY, MT 59301

CRAIG V TAYLOR
PO BOX 178
ANGELA, MT 59312

SHERRY M TAYLOR
PO BOX 178
ANGELA, MT 59312

Priority Date: DECEMBER 31, 1950

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 10.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	28	13N	44E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNE	28	13N	44E	GARFIELD

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 174844-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BARBARA C HIRSCH
821 SILVER SAGE DR
MILES CITY, MT 59301

CRAIG V TAYLOR
PO BOX 178
ANGELA, MT 59312

SHERRY M TAYLOR
PO BOX 178
ANGELA, MT 59312

Priority Date: DECEMBER 31, 1947

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 10.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNW	33	13N	44E	ROSEBUD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSWNW	33	13N	44E	ROSEBUD

Remarks:

THE PLACE OF USE AND POINT OF DIVERSION WERE AMENDED BY THE CLAIMANT ON 1/24/2006 PURSUANT TO SECTION 85-2-233(6), MCA.